IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.217 OF 2002

Manoj Gulabrao Patel
An Adult, Indian Inhabitant,
Holder of Licence CL - III No.184,
Renukabaug Society,
Mumbai - Agra Road
Nashik .. Appellant

Vs

1.The State of Maharashtra ..
2.The Commissioner
State Excise,
Old Customs House,
Mumbai ..
3.The Collector
District Nashik ..
4.The Superintendent
State Excise,
Nashik .. Respondents

None for the appellant.
None for the respondent.

CORAM : S.B.MHASE &
D.B.BHOSALE, JJ.

DATED : MARCH 31, 2005.

JUDGMENT (PER S.B.MHASE, J.)

. None present for the appellant and the respondents.

2. The appellant herein has filed writ petition No.2891 of 2002 challenging the order passed by the Commissioner of State Excise, Maharashtra State dated 30th March, 2002 since there was no prosecution as

against the petitioner under Rule 31, 31(4), 33 of Maharashtra Country Liquor Rules of 1972, the Commissioner has taken cognizance of the said report and also pendency of the investigation being satisfied prima facie that the breaches are severe and the case being fit for suspension of licence. However, the said power is with the Collector, the Commissioner has directed the petitioner to deposit Rs.1,00,000/- so as to keep the licence allowed to facilitate the detail enquiry. The said reasoning is reflected from the impugned order when the writ petition appeared for admission. The statement was made by the learned A.G.P. for the State of Maharashtra that the amount is only taken as deposit and that amount is refundable in case the petitioner is acquitted. Therefore, the Single Judge rejected the petition in limine by order dated 4th June, 2002. As against this the present letters patent appeal is filed. However, at the time of admission of this letters patent appeal the statement was made by the Advocate General that the respondent will not enforce the order dated 12th April, 2002 requiring licensee to deposit the amount. He, however, stated that this is without prejudice to the right of the authority to take action in accordance with law including suspension of licence. In view of the statement

being recorded the impugned order came to be passed by the Commissioner though costs is not being enforced as against the petitioner. In fact, on such statement being made the appellant ought to have withdrawn the letters patent appeal. This shows that the Government was not desirous of implementing the said impugned order and intead they desire to proceed for action in accordance with law including action for suspension of licence. Whether such actions were taken by the Government or not we do not know since nobody is appearing when the matter was called out but it equally appears that the Government must not have taken action as against the appellant otherwise the appellant would have taken appropriate precaution to prosecute this matter before us. It appears that the appellant has lost interest in the matter and equally it appears that the matter has become infructuous and, therefore, we desire to dispose of this matter. However, such disposal shall not adversely affect the appellant in case the prosecution is still pending and we in that circumstances feel that the statement made by the Advocate General at the time of admission is suffice to protect the appellant till the final disposal of the criminal prosecution pending as of today. Therefore, we dispose of the letters patent appeal by

the following order:

. If the prosecution which was in existence and pending, when the Commissioner passed the impugned order, is yet pending as on today then the statement made by the Advocate General as recorded in the order dated 7.8.2002 shall remain into force till final disposal of the said criminal prosecution. With these directions the matter is disposed of.

(D.B.BHOSALE, J.) (S.B.MHASE, J.)

/hcs/mar

HIGH COURT AT BOMBAY
CIVIL APPELLATE SIDE

LETTERS PATENT APPEAL NO.217 OF 2002

Date of Decision: March 31, 2005.

For approval and signature:

The Hon'ble Mr.Justice : S.B. MHASE

And

The Hon'ble Mr.Justice : D.B. BHOSALE

1. Whether Reporters of Local papers may be allowed to see the judgement ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Office?